85-1704

No. 86-

Supreme Court, U.S.
FILED
APR 16 1986
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

TERM, 1986

IN RE: JOSEPH S. WOOL

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Richard C. Blum
Blum Associates, Inc.
P. O. Box 299
Burlington, VT 05402
(802)864-6889

Counsel of Record

Attorney for Joseph S. Wool

QUESTIONS PRESENTED

1. In this lawyer disciplinary proceeding originating in the United States District Court for the District of Vermont, did Petitioner Joseph S. Wool receive constitutionally fair notice in the charging papers, apprising him that he was called upon to defend allegations of charging or collecting an excessive fee so as to satisfy the requirement of In re Ruffalo 390 U.S. 544, 20 L.ed 2d 117, 88 S.Ct. 1222 (1968)?

2. Did the Court of Appeals for the Second Circuit commit reversible error in holding that pre-hearing notice to Petitioner Joseph S. Wool in the U. S. District Court was constitutionally adequate?

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED.	i
TABLE OF AUTHORITIES	iii
PETITION	1
OPINIONS BELOW	1
JURISDICTIONAL STATEMENT	2
STATUTORY PROVISIONS	2
STATEMENT OF THE CASE.	2
REASONS WHY REVIEW SHOULD BE GRANTED.	11
CONCLUSION	15

TABLE OF AUTHORITIES

	Pages Cited
Cases	
Gibson v. Lockeed Aircraft Service, Inc., 350 U.S. 356, 100 L.ed 395, 76 S.Ct.366 (1955)	12
In Re Ruffalo, 390 U.S. 544, 550, 20 L.ed 2d 117, 88 S.Ct. 1222 (1968)	i, 11, 13,14
Statutes	
Disciplinary Rule 2-106(A)	4,8,13
Disciplinary Rule 2-106(B)	4,6,8
Disciplinary Rule 9-101(C)	4,5,8
Local Rule 16	3
8 USC 1324(a)(1)	3
28 USC 1254(1)	2

IN THE
SUPREME COURT OF THE UNITED STATES
TERM, 1986

IN RE: JOSEPH S. WOOL
Petitioner[1].

PETITION

Joseph S. Wool petitions this Court to issue a writ of certiorari to the United States Court of Appeals for the Second Circuit to review the judgment by which that court affirmed a judgment of the U.S. District Court for the District of Vermont suspending Petitioner from the practice of law in that court.

OPINIONS BELOW

Neither the opinion of the Second Circuit Court of Appeals nor the opinion of the United States District Court for the

---

1. At all stages of this proceeding The Hon. David A. Gibson, P. O. Box 1767, Brattleboro, Vermont, has acted as Bar Counsel; there are no other parties.

District of Vermont is reported. The former appears in the Appendix to this petition at A-1, the latter at A-6.

JURISDICTIONAL STATEMENT

The judgment of the Court of Appeals was entered on January 21, 1986. This Court's jurisdiction is invoked pursuant to 28 USC 1254(1).

STATUTORY PROVISIONS

This case involves provisions of the Fifth Amendment to the United States Constitution which appear at A-63, Local Rule 16 of the United States District Court for the District of Vermont pertinent provisions of which appear at A-63 and statutes of the State of Vermont pertinent provisions of which appear at A-67-69.

STATEMENT OF THE CASE

Petitioner Joseph S. Wool is a lawyer admitted to practice before the United States District Court for the

District of Vermont (hereinafter District Court) on July 21, 1939. This is a lawyer disciplinary matter before the District Court pursuant to its Local Rule 16, pertinent portions of which appear at A-63.

This matter arose from Mr. Wool's representation beginning in October, 1982, of Rene Cormier, who was then charged with felony counts of smuggling aliens in violation of 8 USC 1324(a)(1). Mr. Wool and the client agreed in advance that the fee would be $6,000.00 U.S. (Memorandum of Decision A-9). After sentence on January 24, 1983, the client wrote a letter to the presiding judge, The Hon. Albert Coffrin, complaining about the services rendered by Mr. Wool (A-24).

Pursuant to Local Rule 16, David Gibson, Esq. was appointed Bar Counsel to investigate the complaint; on July 17,

1984, his report was filed with the District Court (A-42); in pertinent part that report states "... the evidence supports a prima facie conclusion that Mr. Wool violated the Code of Professional Responsibility... as promulgated by the Vermont Supreme Court. Disciplinary Rule 9-101(C) provides as follows: '(C) A lawyer shall not state or imply that he is able to influence improperly or upon irrelevant grounds any tribunal, legislative body, or public official.'"

Nowhere in this report is there any suggestion, allegation or conclusion that the $6,000 fee was excessive or violative of DR 2-106(A); nowhere in this report is there any discussion of any of the factors set forth in DR 2-106(B) (A-42).

On December 17, 1984, Mr. Gibson filed a petition for an order to show

cause with his investigative report appended (A-33) and on December 26, 1984, the District Court issued its order to show cause to Mr. Wool requiring him to respond to "why appropriate disciplinary action should not be taken [against you] for conduct described in said Petition for Order to Show Cause and in the report of investigation of David A. Gibson, Esq. ...." At all times prior to the motion for new trial, Mr. Wool represented himself and appeared at trial pro se.

The Petition sets out nineteen numbered paragraphs, the nineteenth of which specifically sets out the text of DR 9-101(C) quoted above. The eighteen paragraphs above that set out factual allegations that Mr. Wool violated DR 9-101(C). Nowhere is there an allegation that the $6,000 fee was excessive, or clearly excessive; nowhere in the Petition are

there allegations focusing on the factors set out in DR 2-106(B), i.e. the difficulty of the Cormier case, the time spent, the skills involved or Mr. Wool's standing and reputation in the Bar (A-33).

The matter went to contested hearing. Bar Counsel neither presented evidence on the factors set out in DR 2-106(B) nor in any other way tried to prove that the fee was clearly excessive; Mr. Wool testified in his own defense and provided the only trial evidence on the propriety of the fee, in response to questions from the bench. The Wool testimony on this issue appears in the transcript at p.II 102, lines 13-25 as follows:

> JUDGE BILLINGS: What was the basis for assessing the fee?
>
> MR. WOOL: What was that?
>
> JUDGE BILLINGS: The basis for assessing the fee?
>
> MR. WOOL: I felt that this is

what this type of a matter was worth. And I indicated to Miss Morin, who was -- who had met me when we talked about the fee, that that's what it was. And if she did not wish to pay it, they could hire other counsel.

I met with Miss Morin and with Rene's brother at the office of Frank Shoofey. And the matter of the fee was discussed. And I advised them exactly as to what the fee would be."

On August 30, 1985, the District Court issued its "Memorandum of Decision" (A-6). The District Court focused on the $6,000 fee: under the heading "Findings of Facts" the Court reviewed the evidence and then stated "[I]n summary, the evidence at hand establishes without question that the fee charged and collected by respondent was unreasonable and unjustified on the record before us." (A-16) Beginning its "Conclusions" the Court states [A]t the threshold the court concludes that the charge imposed by the respondent for representing Rene Cormier in the federal prosecution in this court

was excessive. More importantly, the charge of $6,000 obviously drained the accused's resources and overburdened some who contributed to its payment. A lawyer is forbidden to charge or collect a fee that is clearly excessive DR 2-106(A)." (A-18) The court then went on to discuss the factors set out in DR 2-106(B).

On the specific allegations of the petition, the alleged factual basis for violating DR 9-101(C), the court said "the evidence fails to establish that respondent explicitly misrepresented that he could or would influence the court or prosecuting officers, oblique suggestion led Cormier and his family to believe a favorable result would be assured by the payment of money." (A-20-21). Again "the evidence presented falls short of establishing that respondent directly stated or clearly implied that the money advanced would be

used to improperly influence the outcome, there was sufficient hint and suggestion to allow a hopeful listener to think such conduct was likely." (A-23)

On motion for new trial which pointed out the failure of procedural due process (A-28), the Court per Holden, J., on oral argument, crystalized the situation as follows:

> But the means for collecting the $6,000, if there'd been no $6,000 fee, I don't think the Court would have been concerned at all. Or if the $6,000 fee was fully justified under all the facts, but the sanction here, you should understand, is not based on a -- respondent's collection of an improper fee.
>
> MR. BLUM: I do understand that, your Honor.
>
> JUDGE HOLDEN: It was the means of his collecting it that troubled the Court, the thrust of the complaint, as written by bar counsel.
>
> Transcript, Motion for New Trial, p.19, lines 4-13.

Despite Judge Holden's reference to

Bar Counsel's complaint, a colloquoy between Judge Billings and Defense Counsel makes clear that the Court was considering Mr. Wool's hearing testimony on the secret issue of the excessiveness of the fee:

> JUDGE BILLINGS: Mr. Blum, do I understand that the testimony or offer of proof would be different than the transcript at the original hearing? Because as I remember it, and I look at my notes, and Mr. Wool stated at that time that he had no payment records whatsoever in this case.
>
> MR. BLUM: No payment records, your Honor?
>
> JUDGE BILLINGS: That's right. Or time records.
>
> MR. BLUM: We have a reconstructed -- we have reconstructed the -- from the file, your Honor.
>
> JUDGE BILLINGS: Well, then, his testimony would be different now than it was at that time?
>
> MR. BLUM: Well, time records means to me, your Honor, the Safeguard type system of time records.
>
> What I'm saying is that we took the file and reconstructed it, letters, trips, that sort of thing, and estimated what amount of time was expended.

JUDGE BILLINGS: But the offer of proof is no different, that he had no records as of that time?

MR. BLUM: No, not at that time, your Honor.

Transcript, Motion for New Trial, p.19, lines 5-23.

New trial was denied. On appeal the Second Circuit Court of Appeals affirmed, holding that pre-hearing notice to Mr. Wool had been adequate, especially since Bar Counsel's report of investigation was attached to the complaint (A-1-4).

REASONS WHY REVIEW SHOULD BE GRANTED

The Court should issue its writ of certiorari to the Court of Appeals for the Second Circuit for two reasons:

1. To review the issue of denial of Petitioner Wool's constitutional right to procedural due process, see In re Ruffalo 390 U.S. 544,550, 20 L.ed 2d 117, 88 S.Ct. 1222 (1968).

2. To review and correct the procedure

employed by the United States District Court for the District of Vermont, and sanctioned by the Court of Appeals, which departed from the accepted and usual course of judicial proceeding, all in the exercise of the power of supervision vested in the Supreme Court, see Gibson v. Lockeed Aircraft Service, Inc. 350 U.S. 356, 100 L.ed 395, 76 S.Ct.366 (1955).

In this federal disciplinary matter, Petitioner Wool was essentially subjected to trial by ambush. He was served with a petition and order to show cause which did not provide him with any fair notice that the issue of an excessive fee was alleged, or that the amount of the fee itself was so large as to suggest improper or corrupt influence (A-33).

The Memorandum of Decision (A-6) by the District Court makes clear that the allegations of the petition were not proved.

However, the Court crafted an alternate method of sustaining the petition: it decided that an issue not raised in the petition, an issue of which Petitioner had no pre-hearing notice, the excessiveness of the legal fee involved, supplied the evidentiary basis to sustain the petition. While it is technically true that the District Court did not directly discipline Petitioner for violation of DR 2-106(A), a violation of that section was clearly the crux of the case.

Should this District Court decision stand, as sanctioned by the Court of Appeals, it would not only permit circumvention of the plain requirements of In re Ruffalo supra, thereby depriving Petitioner of his constitutional right to pre-hearing procedural due process, but also would permit the courts below to depart from the accepted and usual course

of judicial proceedings.

Here, as in Ruffalo, it appears that Petitioner's own testimony in the District Court, on an issue not noticed, formed the minds of the triers of fact in the matter. Should this decision stand, the crudity of an attempt to amend, as was struck down in Ruffalo, becomes unnecessary. Unnoticed violations of the Code will simply be grafted to the allegations of the petition to make a husk of the protections of procedural due process.

The departure from the accepted and usual course is especially poignant here, where the District Court in its Memorandum of Decision taxed the Petitioner with the failure to provide evidence or proof on the issue of which he had no fair pre-hearing notice. Hear the District Court under the heading "Findings of

Fact": "The $6,000 collected by the respondent as retained counsel was not explained nor accounted for. Absent any explication by the respondent, the court has been called upon to consult the court records in the criminal prosecution in which respondent served as defense counsel." (Memorandum of Decision A-17). And again: "in summary, the evidence at hand establishes without question that the fee charged and collected by the respondent was unreasonable and unjustified on the record before us." (Memorandum of Decision A-16)[emphasis ours].

CONCLUSION

Lawyer disciplinary proceedings originating in Federal Courts are infrequent but an important part of the court function. The proceedings must be fair, not only because procedural due process is constitutionally mandated, but also be-

cause the integrity of the court system depends upon it. There is an apparent failure of fundamental fairness here, therefore the court is urged to issue the writ of certiorari to review.

Respectfully submitted,

Richard C. Blum
Blum Associates, Inc.
P. O. Box 299
Burlington, VT 05402

Counsel of Record
for Petitioner

85-1704

No. 86-

Supreme Court, U.S.
FILED
APR 16 1986
JOSEPH F. SPANIOL, JR.
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

TERM , 1986

IN RE: JOSEPH S. WOOL
Petitioner

APPENDIX TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Richard C. Blum
Blum Associates, Inc.
P. O. Box 299
Burlington, VT 05402
(802)864-6889

Counsel of Record

Attorney for Joseph S. Wool

April 17, 1986

TABLE OF CONTENTS

	Page
Opinion, United States Court of Appeals, Second Circuit, In Re: Joseph S. Wool, No. 85-7790 January 21, 1986	1
Memorandum of Decision, United States District Court for the District of Vermont, August 30, 1985	6
Footnotes, 1/	24
Footnotes, 2/	26
Motion for New Trial Pursuant to F.R.C.P. 59 or in the Alternative, For Relief From Final Judgment Pursuant to F.R.C.P. 60(b)	28
Petition for Order to Show Cause, United States District Court, District of Vermont	33
Attachment to Petition	42
United States Constitution, Amend. V	63
U. S. District Court for District of Vermont Local Rule 16 IV and V	63
Vermont Statutes, 12 VSA App. IX C 2 DR 2-106	67
Vermont Statutes, 12 VSA App. IX C 9 DR 9-101	69

UNITED STATES COURT OF APPEALS

Second Circuit

IN RE: JOSEPH S. WOOL.

No. 85-7790

January 21, 1986

Appeal from the United States District Court for the District of Vermont.

Before HONORABLE IRVING R. KAUFMAN, HONORABLE RICHARD J. CARDAMONE, Circuit Judges, HONORABLE CHARLES E. WYZANSKI, JR., District Judge, sitting by designation.

This cause came on to be heard on the transcript of record from the United States District Court for the District of Vermont, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the order of said District Court be and it hereby is affirmed.

1. Wool contends he was never informed he was being investigated for charging an excessive fee and, therefore, he was denied his due process right to pre-hearing notice of the charges levied against him. The district court decision, however, clearly states that Wool was being disciplined for improperly implying to his client that he could influence the district attorney and the judge, not because the $6000 fee was per se excessive. In addition, the district court Order to Show Cause referred to the report prepared by counsel for the bar, which clear-

ly sets forth the conduct for which Wool was being investigated. Accordingly, the appellant received adequate notice of the charges against him.

2. Wool also claims he was denied due process because the district court disregarded certain rules of evidence during the disciplinary hearing. In disciplinary proceedings, however, courts are not strictly bound by the rules of evidence. See Mildner v. Gulotta, 405 F. Supp. 182, 194-195 (E.D.N.Y. 1975), aff'd mem., 425 U.S. 901 (1976). Reviewing the record, moreover, we do not believe the admission of testimony and documentary evidence at the hearing was an abuse of discretion. Wool was present during the taking of all depositions later admitted into evidence, and at the hearing he had unlimited opportunity to cross-examine other witnesses. Accordingly, the admission of the evidence

was not reversible error.

3. Appellant contends his suspension for one year from the practice of law was an abuse of discretion. The district court found that Wool had violated Disciplinary Rule 9-101(c) of the Code of Professional Responsibility, and that the unethical conduct involved a client who was in prison and did not speak English. In light of these facts, the imposition of a one-year suspension from practice was not an abuse of discretion. See In re Schachne, 87 F.2d 887, 888 (2d Cir. 1937).

4. We have carefully considered Wool's other claims, and find them to be equally without merit.

5. Accordingly, the order of the district court is affirmed.

/s/ _____
IRVING R. KAUFMAN

/s/ _____
RICHARD J. CARDAMONE,
Circuit Judges,

/s/_____
CHARLES E. WYZANSKI, JR.
District Judge.

N.B. Since this statement does not constitute a formal opinion of this court and is not uniformly available to all parties, it shall not be reported, cited or otherwise used in unrelated cases before this or any other court.

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

IN RE: JOSEPH S. WOOL, Respondent.

Misc. No. 84-570

August 30, 1985

Before HONORABLE ALBERT W. COFFRIN, Chief Judge, HONORABLE FRANKLIN S. BILLINGS JR., District Judge, HONORABLE JAMES W. HOLDEN, Senior District Judge.

MEMORANDUM OF DECISION

Per Curiam.

The respondent Joseph S. Wool is enrolled as an attorney who was sworn and admitted to practice in the United States District Court for the District of Vermont on July 21, 1939. He has been called upon to respond to a presentment of counsel designated by the court to investigate and conduct these proceedings in conformity with Rule No. 1, Rules of Disciplinary Enforcement as revised and promulgated June 1,

1985; (formerly Rule No. 16, Rules of Disciplinary Enforcement adopted May 1, 1979). An evidentiary proceeding was held by a panel of three judges of the court to consider the issues of fact raised in the complaint and the attorney respondent's answer to the court's order to show cause why he should not be disciplined on the allegations of professional misconduct asserted against him. Upon consideration of the evidence produced at the hearing and the relevant records of the court, the court finds the facts which follow to be established by clear and convincing proof.

Findings of Fact

Rene Cormier and Richard Fleurant, a/k/a Gilbert Savoie, resided in the Province of Quebec when they were taken into custody at the Canadian border by the enforcement officers of the United States on October 4, 1982. They were subsequently charged with the offense of smuggling al-

iens into the Unted States in violation of 8 U.S.C. § 1324(a)(1). The defendants, Cormier and Fleurant, appeared before United States Magistrate Niedermeier on the day of their arrest. Bail in the amount of $25,000 was imposed as a condition for their release. Failing to provide bail, Cormier and Fleurant were remanded to the custody of the United States Marshal, who detained them at a Vermont state correctional facility at South Burlington.

On the date of Cormier's initial appearance before Magistrate Niedermeier an affidavit of indigency was signed and filed in his behalf. The court records in the criminal proceedings, United States of America v. Rene Cormier, Criminal Docket Number 82-27-01, establish that Craig Weatherly, Esquire, of Burlington, Vermont, was appointed on October 13, 1982 to represent this defendant under the provisions

of the Criminal Justice Act.

Soon after Cormier's confinement the respondent received a telephone call from Roland Hamlin, who also resided in Quebec. Wool had previously known and represented Hamlin as his attorney. Hamlin informed Mr. Wool that Cormier and Fleurant had been arrested and requested that the respondent talk to them. Wool conferred with both Cormier and Fleurant at the Burlington correctional facility. During these meetings Mr. Wool informed Cormier that his fee for defending the prosecution would be $6,000, payable in advance.

At the initial meeting at the jail, or shortly thereafter, Wool received $798 from Rene Cormier. As a result of the conferences at the Chittenden Correctional Center, relatives of both arrestees communicated with Mr. Wool concerning his representation of Fleurant or Cormier in the federal smuggling complaint.

The negotiations with Cormier's relatives originated by telephone from Pierre Boisjoly at the solicitation of Rene Cormier's brother, Marcel. Boisjoly was employed by the law department of the City of Montreal. Wool informed the caller that $5,000 was needed to enable him to represent Rene. Marcel did not have the amount on hand, but indicated he would seek help from other members of the family. Wool told Boisjoly that to obtain Rene's release on bail would present no problem after Wool received the $5,000. Marcel was able to arrange to finance the fee with help from other members of the family and friends.

A second telephone communication informed Wool that Marcel would travel to Burlington. Mr. Wool informed Boisjoly that after he received the funds, Rene should be released in about two weeks time.

Marcel Cormier was an experienced elec-

trician. Since he was not conversant in English, he was accompanied by Nicole Morin, who was fluent in French and English, at his first meeting with Mr. Wool on October 14, 1982. The conference was held at the law office of Fred Shoofey in Montreal. Mr. Wool reiterated that his fee was $6,000; of this amount, $800 had been paid to him by Rene Cormier at the jail. Rene borrowed $5,000 from Marcel.

Marcel offered to pay the respondent $1,500 in American money. Although Mr. Shoofey attempted to negotiate below this amount, Mr. Wool stood firm in his demand for $5,000. Marcel testified he understood Mr. Wool to say: "With that kind of money he (Wool) could get Rene released immediately. Just go before the judge."

On October 15, 1982, the day following the Montreal conference, the respondent entered a written notice of appearance as

counsel for Rene Cormier in the federal prosecution in this court. Mr. Wool's formal appearance apparently superseded the appointment of Craig Weatherly, Esquire, made by Magistrate Niedermeier on October 4, 1982, at the time of Cormier's initial appearance in this district. In any event, the respondent appeared at the time of Cormier's arraignment on the indictment in the smuggling charge, which was filed October 18, 1982.

A plea of not guilty was entered before Judge Coffrin. Bail was continued in the amount of $25,000. Shortly thereafter, Mr. Wool indicated to Assistant United States Attorney Scott McGee that a change of plea would be made before trial. A later motion for review and reduction of bail was heard and denied on November 2, 1982.

Denise Cormier, Rene's sister, had been previously employed as a psychothera-

pist in Japan. On her return home in early December, 1982, she first learned of Rene's confinement. She was informed by Marcel and Nicole Morin that Rene would be home for Christmas. She talked to Mr. Wool before Rene changed his plea of not guilty. According to her testimony at the disciplinary hearing, Mr. Wool told her it was "in his hands. Everything is all right. Rene would be home before Christmas."

Miss Cormier was present in court when Rene requested to change his plea of not guilty on December 6, 1982. His plea of guilty was accepted by the court on three of the multiple charges alleged in the indictment. The defendant was remanded to custody for want of bail. The case was continued for presentence investigation and report.

Danielle Brown, a telephone operator and close friend of Rene Cormier, visited with Cormier while he was held at the Com-

munity Correctional Center and attended some of the court proceedings. Frequently her friend and co-worker in the Canadian Bell system, Danielle Mailloux, accompanied her. Sometime prior to the sentence hearing, Danielle Brown, Danielle Mailloux and Nicole Morin met with Mr. Wool in Burlington. The meeting was in response to a request made by the respondent for a further payment of $500. Miss Brown was angered; she understood $6,000 had previously been paid to the respondent. She inquired: "Why more?" The respondent explained that he needed an additional $500 to "get a bigger favor and assure that Rene would come out of it all right." Following this meeting, the three women were able to gather $500. Some of this amount, according to the evidence, was obtained by borrowing on their wages. Following a meeting with Mr. Wool, an envelope containing the money was delivered

to counsel by Miss Mailloux out of the presence of the others. In making this payment, both Miss Brown and Miss Mailloux were given to understand that this contribution would make certain their friend, Rene, "got out with no problems."

Against this, Miss Brown testified on cross-examination by Mr. Wool, that he told her "I can never promise you anything." Although Denise Cormier was unaware of the final payment of $500 at the courthouse, she testified Mr. Wool never talked to her about money to compensate the district attorney or a judge. The respondent testified to the same effect. He explained that the payment of $500 received from the girls was the balance of his fee.

Rene Cormier was sentenced on January 17, 1983, to a term of imprisonment for two years on three counts, with the sentences to be served concurrently. The remain-

ing counts were dismissed on motion of the Government. A motion for reduction of the sentence was denied after hearing on April 4, 1983. The respondent later appeared in behalf of Cormier at a hearing by the United States Parole Commission at Danbury, Connecticut.

Shortly before Rene Cormier was transferred to the federal correctional facility at Danbury, he prepared a handwritten request for a reduction of the sentence imposed on January 17. The translated request was prepared by a translator in French and English on January 24, 1983. 1/ Petr. Ex. 4.

In summary, the evidence at hand establishes without question that the fee charged and collected by the respondent was unreasonable and unjustified on the record before us. The financial affidavit submitted to the court, as required under the

Criminal Justice Act, limits his assets to $800 in cash, and a comparable equity in an automobile.

The $6,000 collected by the respondent as retained counsel was not explained nor accounted for. Absent any explication by the respondent, the court has been called upon to consult the court records in the criminal prosecution in which the respondent served as defense counsel. It there appears that counsel assigned to represent Cormier's codefendant, Fleurant, received $821 for comparable services.

The respondent's efforts to justify the fee and collect the full amount prior to sentencing created untoward inferences of special favors and influences to assure a favorable outcome.

Conclusion

In determining whether the acts and omissions of the respondent constituted mis-

conduct in the course of an attorney-client relationship, the court is guided and directed by the Code of Professional Responsibility adopted by the supreme court of Vermont, written in 12 V.S.A., Appendix IX. [2/]

At the threshold the court concludes that the charge imposed by the respondent for representing Rene Cormier in the federal prosecution in this court was excessive. More importantly, the charge of $6,000 obviously drained the accused's resources and overburdened some who contributed to its payment. A lawyer is forbidden to charge or collect a fee that is clearly excessive. DR 2-106(A).

The factors governing reasonable professional fees are prescribed in the disciplinary rules. DR 2-106B. The professional time involved, the fee customarily charged for similar services in the district, the preclusion from other employment

opportunities, the complexity of the law and the facts involved were left without proof other than the court records.

The respondent entered as defense counsel after another attorney had been assigned to defend Cormier at his initial appearance under the Criminal Justice Act on the basis of indigency. The court is mindful that a change from an assignment under the Criminal Justice Act to an attorney who has been later retained and paid by others than the accused, is not an unusual occurrence. In this instance the inference is plain that the respondent caused the accused to forego the assignment of counsel under the Act, for which he was found qualified, in the false hope of special and favorable treatment to be gained from the respondent's participation as retained defense counsel. Instead of suppressing this false impression entertained by those who engaged him,

the respondent allowed the false hope to continue. The delusion worked to the advantage of the respondent in obtaining an unjust fee.

The first canon of the Code of Professional Responsibility states:

> A Lawyer Should Assist in Maintaining the Integrity and the Competence of the Legal Profession.

12 V.S.A. App. IX cum. supp. p. 223.

The Disciplinary Rules which follow under the rubric of misconduct proscribe that a lawyer shall not:

> (4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.
>
> (5) Engage in conduct that is prejudicial to the administration of justice.

DR 1-102 (4) (5), 12 V.S.A. App. IX supra at 125.

Although the evidence fails to establish that the respondent explicity [sic] misrepresented that he could, or would influence the court or prosecuting offi-

cers, oblique suggestion led Cormier and his family to believe a favorable result would be assured by the payment of money. It was insinuated that improper means would be engaged tc reach that purpose.

It is written in Canon 9:

> A Lawyer Should Avoid Even the Appearance of Professional Impropriety.

The Disciplinary Rules which follow provide:

> A lawyer shall not state or imply that he is able to influence improperly or upon irrelevant grounds any tribunal, legislative body, or public official.

DR 9-101, 12 V.S.A. app. IX, p.286 (1985 Supp.).

The ethical consideration which precedes the rule is stated to be:

> Every lawyer owes a solemn duty to uphold the integrity and honor of his profession; to encourage respect for the law and for the courts and the judges thereof; ... and to strive to avoid not only professional impropriety but also the appearance of impropriety

EC 9-7, 12 V.S.A. App. IX, p.285-286 (1985 Supp.), Model Code of Professional Responsibility, EC 9-6.

The fabric of the proof presented at the evidentiary hearing establishes with convincing clarity that the respondent's conduct in the course of the representation of the defendant, Rene Cormier, in Criminal No. 82-27-01 on the docket of this court, was against long accepted standards of the legal profession. It is plain enough in the evidence that the accused, his family and friends were misled by false hope and veiled assurance of special favor. Their frustration and disappointment in the final outcome were aggravated by respondent's failure to dispel false hopes and eradicate wrongful notions of wrongdoing engendered by the respondent's efforts to justify and then collect an unwarranted and unworthy fee.

Although the evidence presented falls short of establishing that the respondent directly stated or clearly implied that the money advanced to the respondent would be used to improperly influence the outcome, there was sufficient hint and suggestion to allow a hopeful listener to think such conduct was likely. The respondent did nothing to correct or eradicate that appearance. He allowed the wrongful misunderstanding to persist.

This course of conduct, proved by the evidence, violated "the disciplined standards of the profession and belief in the integrity of the courts." E.g., Schware v. Board of Bar Examiners, 353 U.S. 232, 249 (1957), (Frankfurter, J., concurring). See also, In re Monaghan, 126 Vt. 53, 68 (1966) (Dissenting opinion). It cannot be left unattended without appropriate imposition of sanctions. Accordingly, the respondent

will be suspended from the office of Counsellor, Attorney, Proctor and Solicitor, to which he was duly admitted in the District Court of the United States for the District of Vermont, for the period of one year, effective October 1, 1985.

It is SO ORDERED.

Entered at Burlington, in the District of Vermont, this 30th day of August, 1985.

/s/_____
ALBERT W. COFFRIN
Chief Judge

/s/_____
FRANKLIN S. BILLINGS, JR.
District Judge

/s/_____
JAMES S. HOLDEN
Senior District Judge

FOOTNOTES

1/

The Honorable Judge Albert Coffrin
U.S. Federal Court
Burl., Vt.

Your Honor,

I come to you today asking for a reduction of my sentence. I would like to tell the Court that I spent my first 45 days in the maximum security cell and that

my conduct in jail was exemplary.

I gave my attorney (Mr. Wool) $6,000 to get me out of jail but every time I telephoned him he said he'd come to see me, but the three first times he came, it was to collect $800 that I had on my person. After that, he came to see me a few times, and every time he told me not to worry, that I would be out for Christmas.

My family tried to bail me out till the sentencing, even offered to give up a house, but it was refused since $25,000 in cash was needed.

Jan. 17th was given me as the sentencing date. Mr. Wool assured me that I would be free the 17th and he also said it over the phone to Danielle Mailloux and Danielle Bronx.

When I was in court the 17th, I received a big blow when I heard the sentence of two years as I was certain I would go free. He (Mr. Wool) told me not to say anything when your Honor asked me if I had something to say before handing down the sentence.

I would like the court to know that I owe $21,000 - $3,000 for a ring - I paid $1500 on the ring already. If I stay in prison, I have no way of returning this $21,000.

Could Your Honor place me on probation and report every week or every month instead?

If I stay in prison, I lose my name. At age 37, or when I am free, I won't be able to get a bank loan anywhere unless I repay the sum of $21,000.

I swear that I will accept whatever sentence you may decide in my favor but I would love to be free.

I also wish to thank you for listening to my list of grievances and I beg for

Your leniency.

(Signed) Rene Cormier
Translator Sister Esther Lucy
1/24/83 3:35 P.M.

2/

The Code of Professional Responsibility inscribed in Title 12, Appendix IX, Vermont Statutes Annotated, was promulgated and adopted by the House of Delegates of the American Bar Association, August 12, 1969, as the Model Code of Professional Responsibility and Code of Judicial Conduct.

The Preamble and Preliminary Statement which prefaced the promulgation explains:

> The Canons are statements of axiomatic norms, expressing in general terms the standards of professional conduct expected of lawyers in their relationships with the public, with the legal system, and with the legal profession. They embody the general concepts from which the Ethical Consideration and the Disciplinary Rules are derived.
>
> The Ethical Considerations are aspirational in character and represent the objectives toward which every member of the profession should strive. They constitute a body of principles upon which the lawyer can rely for guidance in many specific situations.
>
> The Disciplinary Rules, unlike the Ethical Considerations, are mandatory in character. The Disciplinary Rules state the minimum level of conduct below which no lawyer can fall without being subject to disciplinary action.

Model Code of Professional Responsibility and Code of Judicial Conduct as amended August, 1980.

The Code of Professional Responsibility

was adopted by the supreme court of Vermont February 10, 1971; amended July 15, 1977; October 28, 1983, effective March 1, 1984; June 28, 1984 effective June 1, 1985.

The citations appearing in the opinion are to provisions of the Code in effect during the time period alleged in the complaint in keeping with the provisions of Rule 16 of the United States District Court for the District of Vermont effective May 1, 1979, as revised June 1, 1985 and redesignated Rule 1.

Pertinent to these proceedings is Rule 1, Subdivision IV(b) which provides:

> Acts or omissions by an attorney admitted to practice before this Court, individually or in concert with any other person or persons, which violate the Code of Professional Responsibility adopted by this Court shall constitute misconduct and shall be grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship. The Code of Professional Responsibility adopted by this court is the Code of Professional Responsibility adopted by the highest court of the state in which this Court sits, as amended from time to time by that state court, except as otherwise provided by specific Rule of this Court after consideration of comments by representatives of bar associations within the state.

The procedure in disciplinary proceedings in this court is established by the provisions of Rule 1, V.

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

IN RE:) Misc. No. 84-570
)
JOSEPH S. WOOL)

MOTION FOR NEW TRIAL PURSUANT TO F.R.C.P. 59 OR IN THE ALTERNATIVE, FOR RELIEF FROM FINAL JUDGMENT PURSUANT TO F.R.C.P. 60(b)

NOW COMES Respondent by his attorney, Richard C. Blum, and pursuant to F.R.C.P. 59 and 60(b) and based upon the Affidavits attached and the allegations below, moves the Court for either a new trial pursuant to Rule 59 or to set aside the final judgment in the above matter pursuant to Rule 60(b). For his motion, Respondent alleges as follows:

1. That by petition and order to show cause dated December 26, 1984, Respondent was summoned to answer the allegations contained in said petition;

2. That said petition focused on an alleged violation of Disciplinary Rule

9-101(C) [see petition, p.4];

3. That the factual allegations of the petition all focused on alleged dealings between and among Respondent, his client and with the client's family and friends;

4. That at no time was Respondent notified that an allegation of violating Disciplinary Rule 2-106(A) was being made or that he was called to defend against an allegation of exacting a clearly excessive fee;

5. That at no time was Respondent notified that an allegation of violating Disciplinary Rule 1 was being made or that he was called upon to defend against the allegation that he failed to correct a misapprehension or by some means insinuated an impropriety;

6. That although Respondent was at all times material a lawyer of long and varied

experience, he nevertheless appeared and co-operated at all times without benefit of counsel;

7. The extent to which Respondent was misled by the failure of the petition to make any mention of Disciplinary Rules 1 or 2 or make any factual statement regarding violations of provisions of those rules, is seen in the filing made by Respondent in which he states his view of the question before the Court; a copy of that filing is attached hereto as Ex.A;

8. That on information and belief, many of the witnesses appearing against Respondent speak English as a second language or do not speak English at all;

9. That all dealings in this matter were conducted in English;

10. That had Respondent had notice that he was charged with exacting a clearly excessive fee, he would have presented wit-

nesses familiar with the fees in Chittenden County in Federal criminal cases to counter the allegation [see affidavits attached];

11. That had Respondent been on notice that he was charged with making oblique suggestions and insinuations, he would have explored the whole matter with experts familiar with the French dialect spoken in Quebec;

12. That the Count found that the fee collected was excessive [decision, p.8] and in part used that finding to support its holding with the finding of violation of Rules 1 and 9;

13. That the Court found that Respondent failed to justify the fee [decision, p.7];

14. That the failure of the petition to plainly state that Respondent was charged with violating DR 2-106(A) or Disciplinary

Rule 1 is a violation of Respondent's right to due process;

15. That the failure of the petition to plainly state the factual basis for a charge of violating DR 2-106(A) or Disciplinary Rule 1 is a violation of Respondent's right to due process;

WHEREFORE, Respondent urges the Court to grant his motion for new trial pursuant to F.R.C.P. 59, or to set aside pursuant to F.R.C.P. 60(b).

DATED at Burlington, Vermont, this 6th day of September, 1985.

JOSEPH S. WOOL

BY:/s/ Richard C. Blum

UNITED STATES DISTRICT COURT

DISTRICT OF VERMONT

IN RE: JOSEPH S. WOOL

PETITION FOR ORDER TO SHOW CAUSE

David A. Gibson, Esquire, having been duly appointed counsel for investigation into the matter of whether probable cause exists for prosecution of formal disciplinary proceedings under the authority of Local Rule 16, Part V, does hereby request the Court to issue an Order requiring Joseph S. Wool, Esq. to show cause why he should not be disciplined, and in connection therewith does hereby set forth the following allegations:

1. On October 4, 1982, Rene Cormier

and Richard Fleurant, aka Gilbert Savoie, were arrested and charged with the offense of smuggling aliens into the United States in violation of 8 U.S.C. sec. 1324(a)(1).

2. After the arrest occurred, Attorney Joseph S. Wool, of Burlington, Vermont, was contacted by an individual named Roland Hamlin who requested Mr. Wool to talk with Mr. Fleurant and Mr. Cormier.

3. Mr. Wool did make contact with Mr. Fleurant and Mr. Cormier and subsequently had contact with relatives of each of them with respect to their need for legal representation in connection with their arrest.

4. Mr. Wool subsequently was engaged to represent Mr. Cormier and

formally notified the Court of his appearance on behalf of Mr. Cormier on October 15, 1982.

5. On December 6, 1982, Mr. Cormier entered a plea of guilty to three counts of a fifteen-count indictment.

6. On January 17, 1983, Mr. Cormier was sentenced by the Court to a term of two years on each count, the sentence on each count to be concurrent.

7. By letter dated January 24, 1983, Mr. Cormier corresponded to the Court and complained in certain respects in regard to the manner of representations by Mr. Wool.

8. On April 4, 1983, a Motion for Reduction of the sentence imposed by the Court was denied.

9. Mr. Cormier stated in his letter of January 24, 1983, that he had had assurances from Mr. Wool that he would be released from the time that he entered his plea of guilty or released from jail by Christmas and thereafter that he would be released from jail on the day of sentencing. Mr. Cormier also stated in that letter that none of these assurances had been fulfilled and that he was therefore dissatisfied with the nature of Mr. Wool's representation of him, particularly in light of having paid a fee of Six Thousand and no/100 ($6,000.00) Dollars in U. S. funds to Mr. Wool for representation of him.

10. Mr. Cormier also stated in his letter of January 24, 1983, that Mr. Wool had instructed him not to say anything to the Court at the time sentence was imposed.

11. Siblings of Mr. Cormier, being Marcel Cormier and Denise Cormier both had conversations with Mr. Wool as a result of which each of them received the impression from Mr. Wool that money paid to him as a retainer would be used as payment so as to be able to gain the early release of Mr. Cormier. Marcel Cormier loaned money to his brother Rene for the legal fees.

12. Denise Cormier and Rene Cormier state that in conversations they each had with Mr. Wool that he had special influence with the Judge and the prosecuting attorney respectively, and that Mr. Wool would get Mr. Cormier out of jail.

13. Three friends of Rene Cormier, Danielle Brown, Danielle Mailloux, and

Nicole Morin stated that they had a joint conversation with Mr. Wool shortly before Christmas of 1982 and that at that time, Mr. Wool informed them that he needed an additional Five Hundred and no/100 ($500.00) Dollars, also stating to them that the District Attorney was a close friend of his and that the cash was needed in order to get a favor. Danielle Mailloux states that she delivered Five Hundred and no/100 ($500.00) Dollars in cash to Mr. Wool on the day of sentencing, that Mr. Wool refused to give her a receipt that day but promised to mail one to her, which was not done.

14. Richard Fleurant, the Co-Defendant, stated that when he was contacted by Mr. Wool shortly after his arrest, Mr. Wool had said he was friendly with the Judge and the District Attorney and that he would get him out of jail for Six Thousand and no/100 ($6,000) Dollars.

15. In-laws of Richard Fleurant, Roger

and Chantelle Laurant, stated that Mr. Wool told them he would get Fleurant out of jail if they paid him Three Thousand and no/100 ($3,000.00). Richard Fleurant stated that he had the impression from what was said to him by Mr. Wool that the money would have been used to influence someone.

16. Mr. Wool's conversation with Rene Cormier's brother, Marcel Cormier, was conducted with the assistance of Pierre Boisjoly, a former private investigator and a person who was fleunt in both French and English. Mr. Boisjoly concluded on the basis of that conversation that Mr. Wool gave the impression that part of the fee demanded by Wool would be to pay for influencing someone in connection with favorable disposition of Mr. Cormier's case.

17. Mr. Wool, in response to being advised concerning the allegations that he had made promises that he could get Mr. Cormier

out of jail on payment of a retainer of Six Thousand and no/100 ($6,000.00) Dollars and that he had special influence with the District Attorney and the Judge and that some of the money would be used as a payoff, was adamant and vehement in denying the truth of each and every such allegation.

18. Mr. Wool did represent Rene Cormier and appeared in person in connection with the hearing before the U.S. Bureau of Prisons at Mr. Cormier's parole hearing.

19. The Code of Professional Responsibility, as recommended by the American Bar Association and as promulgated by the Supreme Court for the State of Vermont, provides in Disciplinary Rule 9-101(C) as follows:

> "A lawyer shall not state or imply that he is able to influence improperly or upon irrelevant grounds any tribunal, legislative body, or public official."

By Local Rule of Procedure No. 16.IV.B the Code of Professional Responsibility as ad-

opted by the U.S. District Court for the District of Vermont as the standard for professional conduct attorneys admitted to practice before this Court.

WHEREFORE, it is hereby requested that, based on the foregoing, an order to show cause be issued requiring Joseph S. Wool, Esquire, to show cause within thirty (30) days after service of the Order why Joseph S. Wool, Esquire should not be disciplined.

Dated at Brattleboro, Vermont, this 7th day of December, 1984.

/s/_____

DAVID A. GIBSON, ESQUIRE
P. O. Box 1767
87 Green Street
Brattleboro, Vermont 05301
Counsel

ATTACHMENT TO PETITION

July 17, 1984

The Honorable Albert B. Coffrin, Jr.
Chief United States District Judge
District of Vermont
Federal Building, P.O. Box 522
Burlington, Vermont 05401

In Re: Joseph Wool, Esq.
Complaint of Rene Cormier

Dear Judge Coffrin:

The following is the report of the investigation conducted by me regarding the above matter.

Based on the letter submitted to you by Rene Cormier, dated January 24, 1983, and based on my interview of him at Hartford, Connecticut, on August 4, 1983, Mr. Cormier's complaints may be summarized as follows:

1. Mr. Cormier was dissatisfied with the results of the representation by Mr. Wool, particularly in light of having paid

$6,000.00 in United States funds to him, and in light of assurances perceived by Cormier that he would, first, be released when he entered his plea of guilty or be out of jail by Christmas, and second, that he would be released on January 17, 1983, the date of sentencing. (Cormier was arrested on October 4, 1982; indicted on October 14; arraigned on October 18; bail hearing on November 2; entered a change of plea to guilty on three of the fifteen counts on December 6; was sentenced on January 17, 1983; and motion for reduction of sentence was denied on April 4, 1983. The sentence imposed was for two years. A co-defendant, Richard Fleurant, a/k/a Gilbert Savoie, was arrested at the same time and also was sentenced to a two year term on January 17, 1983.)

2. Mr. Cormier was told by Mr. Wool not to say anything at the time of his sentencing. Cormier stated to me that he had wanted to say say a lot to the Court. Cormier's letter to

you of January 24, 1983, is consistent with what he stated to me in August as to what he had wanted to say in court: (a) his complaint about spending forty-five days in maximum security; (b) his complaint about the representation by Mr. Wool with respect to the payment of the $6,000.00 fee and with respect to promises made to him by Mr. Wool about getting released from jail, which promises were all lies.

In the course of the investigation conducted by me, the following sources of information were examined:

1. Court records of Cormier's and Fleurant's cases;

2. Transcripts of Cormier's change of plea, sentencing, and reduction of sentence hearings;

3. Cormier's pre-sentence investigation report;

4. U.S. Marshal's records re Cormier;

5. Burlington Correctional Center records re Cormier;

6. U.S. Probation office records;

7. Interviews with twenty individuals including Cormier, Wool, U.S. Probation Officer Rendino, Asst. U.S. Attorney McGee, U.S. Probation Officer Picher (interpreter), and fifteen Canadian citizens.

Summary of investigation

A. Allegations re representations by Mr. Wool that may have exceeded permissible limits:

Several of the individuals contacted stated that Mr. Wool led them to believe he had special influence with either the prosecuting attorney or the judge, or both:

(1) Marcel Cormier spoke with Mr. Wool shortly after Rene's arrest, through an interpreter (Pierre Boisjoly, formerly a private investigator) - there was no specific statement that money paid to Wool as a re-

tainer would be used as a pay-off, but there was a strong inference money would be so used. Marcel Cormier is Rene's brother and loaned the money to Rene for the legal fees.

(2) Denise Cormier, sister of Rene, had three contacts with Mr. Wool, the final one being on the date of sentencing. She received the impression from Wool that he had special influence with the judge. The impression she received led her to believe that money would be paid to the judge. Denise Cormier voiced concerns to Mr. Rendino in December of 1982, stating that Mr. Wool had said he would "pressure the judge to let Rene out" upon payment of his retainer and that Rene had been led to believe he would be going home on the day that he changed his plea to guilty. (Rendino confirms that Rene Cormier had the impression that he was to be released at the time of his change of plea).

(3) Rene Cormier stated that Mr. Wool repeatedly assured him that he would be released from jail before Christmas, and subsequently, at the time of sentencing. Cormier states that Wool said he was going to have lunch with the judge and that he had influence with the prosecuting attorney. (On January 11, 1983, prior to sentencing, Cormier told Rendino that Wool had said on the occasion of their first meeting he would get Cormier out of jail but that he needed $5,000.00)

(4) Danielle Brown, a friend of Rene Cormier, stated that she and two friends visited with Mr. Wool shortly before Christmas of 1982 at Wool's office. At that time Wool told them he needed $500.00 more. According to Brown, Wool said that the "District Attorney is a close friend of mine. We need cash in order to get a favor."

(5) Danielle Mailloux stated that she accompanied Brown and corroborated what Wool

had said. Ms. Mailloux states that she gave Wool $500.00 on the day of sentencing. Mailloux also stated that Wool refused to give her a receipt on the day of sentencing. Wool also told her that he would mail a receipt to her, but had not done so by mid-August of 1983.

(6) Nicole Morin was the third person present at Wool's office at the time the $500.00 was discussed. Her memory of the conversation about it is less certain than that of Brown and Mailloux. Morin did recall the fact of contributing toward the $500.00 and that Mailloux delivered it to Wool on the day of sentencing. (Morin had telephoned Rendino on January 27, 1983, ten days after sentencing, and related that Wool had assured her on the day before sentencing not to worry. Cormier also had told Rendino on January 11, 1983, that Morin had called Wool and told Cormier

that Wool had said Cormier would be back in Montreal in a couple of days.)

(7) Richard Fleurant, co-defendant, stated that he had contact with Wool shortly after his arrest and was told by Wool that he could get him out of jail for $6,000.00. Fleurant also stated that Wool said he was friendly with the judge and the district attorney. Fleurant's in-laws, Roger and Chantelle Caurant, confirmed that Wool had said he would get Fleurant out of jail if they paid him $3,000.00. Roger Laurant received the same impression as Denise Cormier, i.e. that the money would have been used to influence someone.

(8) Mr. Wool vehemently denied that he had made any promises to Rene Cormier or to anyone else that he would get Cormier out of jail, either at the stage of setting bail, change of plea, or sentencing. Wool characterized as "outrageous" the suggestion that

he had said he had special influence with the judge or the assistant U.S. attorney or that he was owed a favor or that he received money as fees which in turn would be used to be paid either to the judge or the prosecuting attorney.

Wool recounted the following:

After the arrest of Cormier and Fleurant he received a telephone call from another individual who asked him to talk with them. He did so, informing them of his fee requirements and that he could represent only one. Later, he met with three girls in Montreal at the law office of Frank Shoofey. The three were employees of the telephone company. Wool informed them about the bail requirements (that property would not be permitted) and of his fee requirement. Wool said that they asked if it would be okay to pay most of it initially and the balance later. Wool said he told them that arrangement was okay. (I did not inform

Wool about the version told by Brown, Mailloux and Morin as to payment of $500.00 on the day of sentencing.) Wool stated that he made many visits to Cormier at the Correctional Center and that he had records of many telephone calls, both with Cormier and with his friends and family. (Records of visitors at the Correctional Center were less than complete. It does appear that Wool did visit Cormier on at least six or seven occasions and possibly as many as eleven or twelve times.) Wool denied making any flat promises regarding Cormier's release, either on bail or when the guilty pleas were entered or at time of sentencing. Wool did state that he voiced the hope that the judge would sentence Cormier to the time spent in jail, which was the viewpoint that Rendino had expressed to him. Wool further stated that he had continued to assist Cormier after sentencing by appearing at the parole hearing

in Danbury and by communications both by telephone and mail, as well as seeking a sentence reduction.

B. Allegations that Mr. Wool interfered improperly with Mr. Cormier's right of allocution at the time of sentencing:

(1) Rene Cormier stated in his letter of January 24, 1983, that he was told by Mr. Wool not to say anything to the Court at the time of sentencing. Mr. Cormier reiterated this statement to me in August and went on to say that he would have told the following:

(a) that he was upset about having spent forty-five days in maximum security detention prior to his change of plea;

(b) that he had paid $6,000.00 to Mr. Wool for legal fees and had been promised by Mr. Wool that he would be released from jail before Christmas, as well as other promises relating to personal belongings

that were in Cormier's truck at the time of his arrest, which promises were all lies.

(2) U.S. Probation Officer Rendino recalls that, at the time the Court asked Mr. Cormier if he had anything to say at the sentencing hearing, Mr. Cormier started to speak in French. There was then an extended discussion between Mr. Cormier and Mr. Wool, through the interpreter, Mr. Picher. According to Mr. Rendino, Mr. Cormier was very animated and agitated, and the moment impressed Mr. Rendino as a dramatic one. Mr. Rendino observed Mr. Wool to have an expression on his face of one who was worried. After the exchange between Mr. Cormier and Mr. Wool, Mr. Cormier declined to state anything to the Court.

(3) Mr. Picher's recollection of the discussion between Mr. Cormier and Mr. Wool at the time of sentencing was somewhat vague and general. The exchange between the two

did not result in an impression of a moment of high drama.

(4) Mr. Wool stated that the discussion between him and Cormier at sentencing was likewise vague in his memory. As alluded to earlier, Mr. Wool was hopeful that Mr. Cormier would receive a sentence that would limit the period of incarceration to time already spent in jail for lack of bail and was under the impression that Mr. Rendino felt such a sentence would be appropriate. Having experienced situations where criminal defendants, at time of sentencing, have made statements to their detriment, Mr. Wool felt in this case that Mr. Cormier should not make any statement to the Court. Mr. Wool noted that there are occasions when a criminal defendant should make a statement at time of sentencing, but that this time was not one of those occasions. Mr. Wool noted also that there had been discussions off the record, in chambers,

relating to co-operation by Mr. Cormier with investigating authorities.

(5) The pre-sentence investigation report included complaints made by Mr. Cormier to Mr. Rendino about having spent forty-five days in maximum security, and about having borrowed $6,000.00 from his brother for legal fees but having had no results to show for it.

(6) Mr. Cormier also stated to Mr. Rendino, prior to sentencing, that he had discussed with Mr. Wool the prospect of being an informant for the Government but that he, Cormier, feared for his life if he did become an informant.

Analysis

1. With respect to the allegation about interference with Mr. Cormier's right of allocution, it is clear that Mr. Wool did dissuade Mr. Cormier from making a statement to the Court. The decision of a criminal

defendant as to whether or not to make a statement to the Court at time of sentencing, however, is given at a time and under circumstances where a lawyer's judgment and advice is particularly required to be exercised and given in a careful and considered manner, for if the defendant says the wrong thing to the Court the result could be very detrimental to the defendant. What Mr. Cormier wanted to tell the Court did not particularly bear on the facts of the case or on aspects of his personal situation that might have influenced the Court to be more lenient; rather, the statements would have dealt with his complaints about being in maximum security and about the manner of his attorney's representation of him. Both of these complaints had been included in the pre-sentence investigation report. Mr. Wool's judgment that Mr. Cormier should not voice them to the Court at time of sentencing appears to

have been reasonable and proper. Accordingly, it is my opinion that the evidence does not sustain a finding of improper interference with Mr. Cormier's right of allocution at the sentencing hearing.

2. Concerning the allegation that Mr. Wool made representations which exceeded permissible limits, there is more substantial evidence. In addition to statements from both Rene Cormier and the co-defendant, Fleurant, to the effect that Wool stated he was friendly with the judge and the district attorney (Fleurant) or that he would have lunch with the judge and had influence with the district attorney (Cormier), two female friends of Cormier specifically recalled Wool's having said that the district attorney was a "close friend" and that cash was needed in order "to get a favor." (Brown and Mailloux) A third friend corroborated the payment of $500.00 in cash to Mr. Wool by the three of them on the day of but prior

to imposition of sentence. Also, a brother (Marcel) and a sister (Denise) each received the distinct impression from Wool that he needed a large fee so that he could get Cormier out of jail and that some of the money would be used as a pay-off. Roger Laurant, brother-in-law of Fleurant (the co-defendant), received the same impression when he was considering whether or not to retain Wool to represent Fleurant. Denise Cormier voiced her impression to Mr. Rendino before sentencing and reiterated it later, after Rene Cormier had been released from jail.

Balanced against these allegations is Mr. Wool's vehement denial of having made any such representations about having special influence with the judge or the district attorney. While it is virtually impossible to prove a negative, Wool's statement as to the fee arrangement with the three female

friends of Cormier is a plausible explanation for the payment of $500.00 to him on the day of sentencing. Also, at the time Cormier entered his plea of guilty to three counts (December 6, 1982) the transcript indicates that there were no threats or promises made to Mr. Cormier in order to induce him to plead guilty. (Page 9, lines 7-9)

There are several other factors as well. The witnesses are all Canadian citizens and are not familiar with the United States system of justice. Danielle Brown is fluent in English and appears to be an intelligent person. Danielle Máilloux is able to converse in English, appears to be more reserved than Brown, but was adamant as to what was said by Mr. Wool. Denise Cormier understands and speaks English but is more comfortable with the French language. She appears to be an articulate person of some

sophistication. Marcel Cormier's interpreter, Pierre Boisjoly, is fluent in English and is a former private investigator. Boisjoly was very firm in his conclusion that the fee demanded by Wool was to be used in part to pay for influencing someone. Morin is very fluent in English and is intelligent. Her vagueness of memory may have been purposeful. Rene Cormier converses only in French, but appears to understand some English. He appears to equate "maybe" or "possibly" with a solemn, binding promise.

Conclusion:

At best, Mr. Wool was careless in his communications to various individuals, thereby fostering impressions that he had special influence with the district attorney and the Court. At worst, Mr. Wool made specific statements to the effect that he did in fact have special influence with the district attorney and the judge,

and that one or the other or both were corruptible.

In either event, the evidence supports a prima facie conclusion that Mr. Wool violated the Code of Professional Responsibility as recommended by the American Bar Association and as promulgated by the Vermont Supreme Court. Disciplinary Rule 9-101(C) provides as follows:

> "(C) A lawyer shall not state or imply that he is able to influence improperly or upon irrelevant grounds any tribunal, legislative body, or public official."

At the least, the investigation results sustain a finding of probable cause that Mr. Wool's professional conduct gave the appearance of impropriety. In addition, the statements of the several witnesses, both cumulatively and in the time frames when made (i.e., both before sentencing and after Rene Cormier had been released from jail), sustain a finding of probable cause

to believe that Mr. Wool consciously and deliberately represented that he had special influence with the district attorney and with the judge and that he needed money in order to use the special influence to Rene Cormier's advantage.

A transcript of Danielle Brown's statement is appended hereto.

Respectfully submitted.

/s/ David A. Gibson

DAG:sf

UNITED STATES CONSTITUTION

ARTICLE V.[Criminal indictment; double jeopardy; self incrimination; due process; compensation for taking private property]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any Criminal Case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. DISTRICT COURT FOR DISTRICT OF VERMONT LOCAL RULE 16 IV and V

IV. Standards for Professional Conduct

A. For misconduct defined in these Rules, and for good cause shown, and after notice and opportunity to be heard, any attorney admitted to practice before this Court may be disbarred, suspended from practice before this Court, reprimanded or subjected to such other disciplinary action as the circumstances may warrant.

B. Acts or omissions by an attorney admitted to practice before this Court, individually or in concert with any other person or persons, which violate the Code of Professional Responsibility adopted by this Court shall constitute misconduct and shall be grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship. The Code of Professional Responsibility adopted by this court is the Code of Professional Responsibility adopted by the highest court of the State in which this Court sits,

as amended from time to time by that state court, except as otherwise provided by specific Rule of this Court after consideration of comments by representatives of bar associations within the state.

V. Disciplinary Proceedings

A. When misconduct or allegations or misconduct which, if substantiated, would warrant discipline on the part of an attorney admitted to practice before this Court shall come to the attention of a Judge of this Court, whether by complaint or otherwise, and the applicable procedure is not otherwise mandated by these Rules, the Judge shall refer the matter to counsel for investigation and the prosecution of a formal disciplinary proceeding or the formulation of such other recommendation as may be appropriate.

B. Should counsel conclude after investigation and review that a formal dis-

ciplinary proceeding should not be initiated against the respondent-attorney because sufficient evidence is not present, or because there is pending another proceeding against the respondent-attorney, the disposition of which in the judgment of the counsel should be awaited before further action by this court is considered or for any other valid reason, counsel shall file with the court a recommendation for disposition of the matter, whether by dismissal, admonition, deferral, or otherwise setting forth the reasons therefor.

C. To initiate formal disciplinary proceedings, counsel shall obtain an order of this Court upon showing of probable cause requiring the respondent-attorney to show cause within 30 days after service of that order upon that attorney, personally or by mail, why the attorney should not be disciplined.

D. Upon the respondent-attorney's answer to the order to show cause, if any issue of fact is raised or the respondent-attorney wishes to be heard in mitigation this Court shall set the matter for prompt hearing before one or more Judges of this Court, provided however that if the disciplinary proceedings is predicated upon the complaint of a Judge of this Court the hearing shall be conducted before a panel of three other Judges appointed by the Chief Judge of the Court of Appeals for this Circuit.

VERMONT STATUTES
12 VSA App.IX C 2 DR 2-106

DR 2-106 Fees for Legal Services

(A) A lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee.

(B) A fee is clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a de-

finite and firm conviction that the fee is in excess of a reasonable fee. Factors to be considered as guides in determining the reasonableness of a fee include the following:

(1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly.

(2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer.

(3) The fee customarily charged in the locality for similar legal services.

(4) The amount involved and the results obtained.

(5) The time limitations imposed by the client or by the circumstances.

(6) The nature and length of the professional relationship with the

client.

(7) The experience, reputation, and ability of the lawyer or lawyers performing the services.

(8) Whether the fee is fixed or contingent.

(C) A lawyer shall not enter into an arrangement for, charge, or collect a contingent fee for representing a defendant in a criminal case.

VERMONT STATUTES
12 VSA App. IX C 9 DR-9-101

DR 9-101 Avoiding Even the Appearance of Impropriety.

(A) A lawyer shall not accept private employment in a matter upon the merits of which he has acted in a judicial capacity.

(B) A lawyer shall not accept private employment in a matter in which he had substantial responsibility while he was a public employee.

(C) A lawyer shall not state or imply that he is able to influence improperly or

that he is able to influence improperly or upon irrelevant grounds any tribunal, legislative body, or public official.

(3)

Supreme Court, U.S.
FILED
JUN 18 19[illegible]
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-1704

In The

Supreme Court of the United States

October Term, 1985

JOSEPH S. WOOL,

Petitioner,

v.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

David A. Gibson
David A. Gibson Law Office, P.C.
87 Green Street
P.O. Box 1767
Brattleboro, Vermont 05301
(802) 254-6011

Attorney for Respondent

COCKLE LAW BRIEF PRINTING CO., (800) 835-7427 Ext. 333

HPP

QUESTIONS PRESENTED

1. Did the petitioner receive adequate notice of the charge that he violated the Code of Professional Responsibility and specifically Disciplinary Rule 9-101(c)?

2. Did the respondent United States District Court for the District of Vermont base its disciplinary order on the determination that the petitioner had violated Disciplinary Rule 9-101(c) by implying to his client that he could influence the district attorney and the district judge by improper means?

TABLE OF CONTENTS

	Page
Questions Presented	i
Table of Authorities	iii
Statement of the Case	1
Summary of Argument	4
Argument:	
1. Petitioner was given adequate notice of the charges alleged against him and was not denied due process of law.	5
2. The district court disciplined petitioner for implying he had improper influence, not for charging an excessive fee.	6
Conclusion	9

TABLE OF AUTHORITIES

Page

CASES

In re Ruffalo, 390 U.S. 544 (1968) 4, 5, 6

STATUTES AND OTHER AUTHORITIES

12 V.S.A. App. IX, pp. 223, 225 (Supp. 1985) 2

12 V.S.A. App. IX, pp. 285-86 (Supp. 1985) 2

Code of Professional Responsibility disciplinary rule 1-102 2

Code of Professional Responsibility disciplinary rule 9-101 ..... 2, 6

No. 85-1704

In The
Supreme Court of the United States
October Term, 1985

JOSEPH S. WOOL,

Petitioner,

v.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

STATEMENT OF THE CASE

The United States District Court for the District of Vermont, sitting as a three-judge tribunal, found that the conduct of the petitioner, Joseph S. Wool, "was against long accepted standards of the legal profession." (Peti-

tioner's Appendix, p. 22) (hereinafter referred to as P.A.) The court's finding was based on the precepts of Canon 9, disciplinary rule 9-101, of the Code of Professional Responsibility and on the ethical considerations preceding that rule, citing 12 V.S.A. App. IX, pp. 285-86 (Supp. 1985). The court invoked also the provisions of Canon 1 and disciplinary rules 1-102(4) and (5), citing 12 V.S.A. App. IX, pp. 223, 225 (Supp. 1985).

Petitioner was given clear, written notice that the inquiry into his fitness to practice was based upon allegations that he stated or implied that he could bring improper influence to bear on the outcome of a criminal case. Paragraph 11 of the petition for order to show cause (P.A., p. 37) alleged that both Marcel Cormier and Denise Cormier (brother and sister of Rene Cormier, petitioner's client) received the impression from speaking with petitioner that money paid to him would be used as a payment to obtain the early release of Rene Cormier. Paragraph 12 of the petition for order to show cause alleged that in conversations with Rene Cormier and Denise Cormier, petitioner stated that he had special influence with the judge and prosecuting attorney (P.A., p. 37). In fact each paragraph of the petition for order to show cause from 11 through 16, inclusive, plus paragraph 9, alleged either that petitioner stated that he had improper influence, that he gave people from whom he was seeking employment or collection of a fee the impression that he could exercise improper influence, or that he could assure his client, Rene Cormier's release from incarceration by a date certain (P.A., pp. 36-39). Finally, paragraph 19 of the petition for order to show cause cites disciplinary rule 9-101(c) of the Code of Professional Responsibility

as adopted by the Vermont Supreme Court and the United States District Court for the District of Vermont, and quoted it as follows:

> A lawyer shall not state or imply that he is able to influence improperly or upon irrelevant grounds any tribunal, legislative body, or public official.

Thus, petitioner was not misled as to the thrust of the petition for order to show cause. Moreover, in the taking of pre-hearing depositions and in cross-examining witnesses at the hearing, petitioner sought to establish that he had never made any hard promises and that his words had been misunderstood.

Petitioner has not argued that the evidence was insufficient to sustain this charge. Rather, he asserts that the district court really disciplined him for taking an excessive fee, a charge of misconduct of which he had, so he claims, no notice.

There are two answers to this argument. First, the district court disciplined petitioner for misleading his client, and his family and friends, who were paying petitioner's fee, as to what he could accomplish and how he could accomplish it; the disciplinary action was not for collecting an excessive fee. Second, petitioner was put on clear notice that the matter of his fee was in issue by the allegations of the petition for order to show cause, by bar counsel's investigation report, which was attached to the petition, and by the complaint of Rene Cormier to Chief District Judge Coffrin which initiated this proceeding, which was described in the petition, and which was supplied to petitioner shortly after the petition for order to show cause was served upon him.

The memorandum and order of the United States Court of Appeals for the Second Circuit considered the identical contention asserted by Petitioner in his petition for a writ of certiorari from this Court. In rejecting petitioner's claim, the court of appeals found that the decision of the district court "clearly" stated that petitioner was being disciplined, not because of a fee that was *per se* excessive, but rather for improperly implying that he could influence the district attorney and the judge. The court of appeals further stated that the district court's order to show cause also "clearly" set forth the conduct of the petition that was being investigated and that, therefore, the petitioner had "received adequate notice of the charges against him." (P.A., pp. 2-3.)

SUMMARY OF ARGUMENT

The United States District Court for the District of Vermont did not depart from the accepted and usual course of judicial proceedings in connection with its conduct of the disciplinary proceedings regarding the petitioner. The United States Court of Appeals for the Second Circuit was correct in its determination that the petitioner had received adequate notice of the charges against him and that petitioner therefore had not been denied due process of law. Accordingly, there has been no departure by the lower courts from the principles of *In re Ruffalo,* 390 U.S. 544 (1968), and there is no need for this Court to exercise its power of supervision.

The facts of the case do not support petitioner's contention that he was disciplined because of having charged

an excessive fee. The facts do show clearly that petitioner was disciplined for having violated the provisions of the Code of Professional Responsibility alleged to have been violated by the petition for order to show cause.

———o———

ARGUMENT

1. Petitioner was given adequate notice of the charges alleged against him and was not denied due process of law.

The defects in procedure that were found to exist by this Court in the case of *In re Ruffalo*, 390 U.S. 544 (1968), were not present in this case. In *Ruffalo*, an attorney was charged in an Ohio disciplinary proceeding with twelve counts of misconduct, including two of soliciting clients through an agent. Both the attorney and the agent testified that the agent merely investigated cases for the attorney, including some cases against his own employer.

A thirteenth count was thereupon added by the Ohio disciplinary authority based upon the attorney's hiring the agent to investigate his own employer. The attorney was disciplined in the Ohio proceeding based upon count thirteen and six others, but the Sixth Circuit Court of Appeals subsequently disbarred the attorney on the basis of count thirteen alone. This Court reversed, on the grounds that the Ohio proceedings had become a trap since, while they were already underway, the charges had been amended based upon the testimony of the accused. 390 U.S. at 551.

Nothing like the fundamental unfairness of the *Ruffalo* situation is presented in the instant case.

The petition for order to show cause contained nineteen separate paragraphs, including the quotation of Disciplinary Rule 9-101(c). That rule provides that a lawyer shall not state or imply that he or she can influence improperly any tribunal or public official. The petition for order to show cause also alleged that petitioner had engaged in such conduct, which allegations were recited in several paragraphs—namely, numbers 11, 12, 13, 14, 15 and 16 (P.A., pp. 37-39). The district court's opinion contained the finding that the petitioner's "oblique suggestion led Cormier and his family to believe a favorable result would be assured by the payment of money. It was insinuated that improper means would be engaged to reach that purpose." (P.A., p. 21.)

Based on that finding and others set forth in the next part of this argument, it is clear that the district court did not subject petitioner to "trial by ambush," as claimed in his petition. No "trap" such as was found to exist in the *Ruffalo* case was present in this case.

Thus, petitioner's reliance on the *Ruffalo* case is misplaced and unwarranted. No violation of due process occurred.

2. The district court disciplined petitioner for implying he had improper influence, not for charging an excessive fee.

Petitioner seizes upon language in the district court's opinion wherein that court characterized his six thousand dollar fee for plea bargaining Mr. Cormier's case as unjustified on the record before it. In trying to show that

this was the district court's basis for imposing discipline, petitioner has taken this language out of context. The language of the opinion, taken as a whole, demonstrates that the district court imposed discipline because petitioner used improper means to justify and to collect this fee.

The district court stated, in pertinent parts, the following:

> The respondent's efforts to justify the fee and collect the full amount prior to sentencing created untoward inferences of special favors and influences to assure a favorable outcome. (P.A., p. 17)
>
> . . . . .
>
> In this instance the inference is plain that the respondent caused the accused to forego the assignment of counsel under the (Criminal Justice) Act, for which he was found qualified, in the false hope of special and favorable treatment to be gained from the respondent's participation as retained defense counsel. Instead of suppressing this false impression entertained by those who engaged him, the respondent allowed the false hope to continue. The delusion worked to the advantage of the respondent in obtaining an unjust fee. (P.A., pp. 19-20)
>
> . . . . .
>
> The fabric of the proof presented at the evidentiary hearing establishes with convincing clarity that the respondent's conduct in the course of the representation of the defendant, Rene Cormier, in Criminal No. 82-27-01 on the docket of this court, was against long-accepted standards of the legal profession. It is plain enough in the evidence that the accused, his family and friends were misled by false hope and veiled assurance of special favor. (P.A., p. 22)

Thus, it is clear that the district court disciplined petitioner for using improper means to justify and effectuate the collection of his full fee, not because the fee was excessive. There is no ambiguity on this point when the district court's remarks about the fee are read in context.

Any ambiguity in the district court's opinion is dispelled by the transcript of the hearing on petitioner's motion for new trial. Both Chief Judge Coffrin and Senior Judge Holden clearly announced from the bench that the discipline of petitioner was because he made improper assurances and implications to justify and collect his fee, not because the fee was excessive. See Transcript of Motion for New Trial, at 9-10. Judge Holden stated, in part:

> The thrust of the opinion, apparently, is misunderstood. The problem here is the means that were used to collect Six Thousand Dollars ($6,000) from a prisoner who was in jail and who had Eight Hundred Dollars ($800). And before—shortly before trial, the hope of favorable treatment many times hinged on whether or not he paid up the fee.
>
> Now, it isn't the fee that troubles this Court. I speak for all of us, I think. It's the way that was used to collect Six Thousand Dollars ($6,000) from an indigent prisoner. Tr. of Motion for New Trial at 9.

Moreover, Chief Judge Coffrin added, "I agree with Judge Holden in his statement as to the intention of the Court in this matter." *Id.* at 10.

It being clear that the district court imposed discipline upon petitioner for making misleading assurances in order to collect a fee, it is equally clear that petitioner was given notice of the actual charge upon which discipline was imposed. His argument that he was deprived

of notice of the charge against him requires this Court to assume that both Judge Coffrin and Judge Holden were mistaken as to why the court had imposed discipline upon him. Petitioner's attempt to nullify the entire proceeding for lack of notice is without support in the record.

Reduced to its simplest terms, petitioner was disciplined for exacting payment of his fee by implying that the money would be used to influence the district judge and the district attorney in order to secure the release of his client. Such conduct, as found by the district court to have been performed by the petitioner, is reprehensible and a violation of the Code of Professional Responsibility. Petitioner's suspension for one year was based on that violation and not for having charged an unreasonable fee.

———o———

CONCLUSION

For the reasons stated above, the petition for a writ of certiorari to the United States Court of Appeals for the Second Circuit should be denied.

Dated: June 18, 1986.

Respectfully submitted,

David A. Gibson
David A. Gibson Law Office, P.C.
87 Green Street
P.O. Box 1767
Brattleboro, Vermont 05301
(802) 254-6011

Attorney for Respondent